

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Yaodi Hu

)
)

Docket No. 02-0249

vs.

Illinois Power Company.

)

Formal Complaint as to
Service in Danville, Illinois

)
)

**VERIFIED MOTION TO COMPEL OR,
IN THE ALTERNATIVE, DISMISS THIS MATTER WITH PREJUDICE**

Pursuant to 83 Ill. Admin. Code § 200.190, Illinois Power Company (hereinafter “IPC”) hereby files a Motion to Compel or, in the Alternative, Dismiss this Matter with Prejudice. In support of this Motion, IPC states as follows:

I. Background

On April 8, 2002, Complainant, Yaodi Hu (hereinafter “Mr. Hu”) initiated this docket for the purpose of challenging the denial of service at certain locations of a commercial building in Danville, Illinois. On July 9, 2002, Mr. Hu amended his complaint to allege improper conduct on the part of IPC insofar as the Company has requested that certain rewiring at the commercial building be done. Specifically, Mr Hu expressed that the issue in this matter is:

[W]hether Illinois Power could use its monopolistic position and its unique partnering relationship with City of Danville to force me converting three service drops into one service and transferring all meters and disconnect to outside of Building.

Amended Complaint, p. 1

On July 9, 2002, the Administrative Law Judge Jones (hereinafter "ALJ Jones") held a Prehearing Conference wherein a discovery schedule was established. More specifically, the parties were required to submit data requests or other informational requests to the other party on or before July 23, 2002. Responses to any informational requests were required on or before August 20, 2002. On July 23, IPC sent Mr. Hu six data requests. See Exhibit 1. Mr. Hu did not request any information from IPC. See Exhibit 2. Mr. Hu did not provide any response to IPC's data request prior to the August 20, 2002, deadline. See Exhibit 3.

On August 28, 2002, ALJ Jones held a Status Hearing wherein another discovery schedule was put in place. Mr. Hu was to respond to IPC's previously submitted data requests on September 11, 2002. Mr. Hu was also to submit any data requests to IPC on that date. IPC was to respond to these requests on October 9, 2002. Follow-up data requests were to be submitted on or before October 16, 2002. Responses to these follow-up data request are to be submitted on October 30, 2002.

On September 11, 2002, Mr. Hu provided his response to IPC's Data Requests 1 through 6. Upon review, IPC determined that Mr. Hu had provided only a limited response to certain data requests. On September 13, 2002, IPC sent Mr. Hu a letter requesting that he provide a complete response to Data Requests, 2, 3, and 4 by September 25, 2002. See Exhibit 4. IPC did not receive any supplemental responses to these data requests by September 25, 2002. On September 27, 2002, counsel for IPC contacted Mr. Hu in an effort to resolve the discovery dispute. The parties agreed that Mr. Hu would provide a full response to the data requests on or before October 4, 2002. See Exhibit 5. IPC did not receive any supplemental responses by October 4, 2002. On

October 7, 2002, IPC made yet another attempt to resolve this discovery dispute by telephone and letter. See Exhibit 6. IPC requests that Mr. Hu provide the complete responses by October 11, 2002. Mr. Hu has provided an additional letter from the city of Danville, but has not provided any additional response to the data requests.

II. Mr. Hu's Responses Are Insufficient and Non-Responsive

Under the Commission's rules,

It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Further, it is the policy of the Commission to encourage voluntary exchange by the parties and staff witnesses of all relevant and material facts to a proceeding through the use of requests for documents and information.

83 Ill. Admin. Code § 200.340.

Data Request #2

In an effort to obtain additional information regarding Mr. Hu's Complaint, Illinois Power requested the following information:

With respect to your allegation regarding the fact that "[s]everal City Officials did not deny that they acted upon Illinois Power and its interests," please provide each and every fact, including the name of the official and date of the alleged act[s], that you have that support your allegations."

Illinois Power Company's Data Request 2 Directed to Yaodi Hu.

In his response, Yaodi Hu makes its clear that he is not providing IPC all of the facts by expressly stating that "[t]his Response does not include 'each and every fact' requested by IP." See Exhibit 7. This information is clearly relevant to this proceeding as it directly relates to allegations made in Mr. Hu's Complaint. Accordingly, IPC respectfully requests that Mr. Hu be compelled to produce a complete response or in the

alternative, dismiss this matter as Mr. Hu has refused to comply with the Commission's Rules by failing supply the requested relevant information in this matter.

Data Request # 3

IPC also requested that Mr. Hu provide:

With respect to your allegation regarding the fact that "[i]t was the Illinois Power repeatedly solicited City of Danville's electrical inspector denying power to us." Provide each and every fact, including the names of the individuals involved, date, time and nature of the alleged act, that support your allegations.

Illinois Power Company's Data Request 3 Directed to Yaodi Hu.

Mr. Hu provides a limited response to this data request. See Exhibit 8. In fact, he provides no information that would support his allegation. If Mr. Hu does not have any facts to support his allegations, IPC request that he be compelled to state such and the Commission dismiss this matter as he does not have any facts that would support "his issue" in this matter. If Mr. Hu does have information to support his allegations, then IPC request that he be compelled to produce a complete response.

Data Request # 4

Finally, IPC requested that Mr. Hu provide the following:

Please detail, by date, subject matter, and content, each and every conversation, telephonic, in person, or otherwise, in which you discussed with any person associated with the City of Danville, Illinois Power, or any agency regarding electric service for the building located at 428-432 E. Main Street, Danville, Illinois 61832.

Illinois Power Company's Data Request 4 Directed to Yaodi Hu.

Mr. Hu provides in his response vague references of conversations with the representatives from the city of Danville and further provides that "[o]nce the City of Danville is joined as defendant, IP can send its data request to city of

Danville.” See Exhibit 9. This response is clearly inadequate. Illinois Power is entitled to this information from Mr. Hu. The Commission’s policy of full disclosure of all relevant and material facts to a proceeding requires an individual to make, at a minimum, a reasonable effort to respond to the request. Illinois Power understands that Mr. Hu may be unable to recall each and every detail of the conversation, but expects, and is entitled, to have him provide some information surrounding the discussions he has had. Clearly, this information is within the scope of Mr. Hu’s knowledge and is directly related to the issues in this case. Accordingly, IPC respectfully requests that Mr. Hu be compelled to provide a complete response to this data request or, in the alternative, this matter be dismissed.

III. Mr. Hu’s Lack of Response Warrants Dismissal of this Matter

As demonstrated above, IPC has made reasonable efforts to resolve this discovery dispute. Unfortunately, Mr. Hu has repeatedly failed to provide IPC with the requested information, even though he has, on numerous occasions, stated that he would provide the information. In fact, Mr. Hu’s lack of response to IPC’s data requests necessitated the need for additional time for discovery. It appears that Mr. Hu does not want to prosecute this matter or has simply realized that the facts he would have to produce demonstrate that the difficulties he is experiencing in obtaining electrical service are not based upon the actions of IPC.

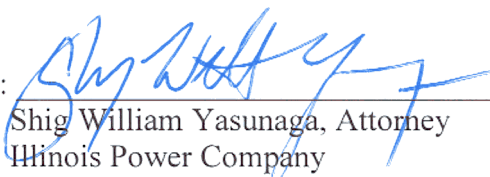
IV. Conclusion

All of the discovery requested in the above-described data requests is pertinent to the issues in this proceeding and is reasonable. Mr. Hu should be compelled to respond to this discovery by October 30, 2002.

Wherefore, IPC respectfully requests that its motion to compel be granted and Mr. Hu be ordered to supplement the above-referenced data request by October 30, 2002, or in the alternative, this matter be dismissed.

Respectfully submitted

By:

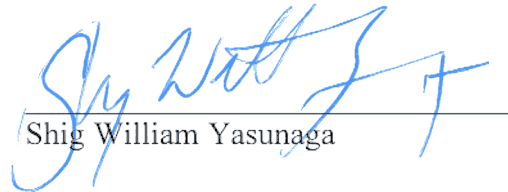

Shig William Yasunaga, Attorney
Illinois Power Company

Illinois Power Company
500 S. 27th Street
Decatur, Illinois 62521
Telephone: (217) 424-7050
Facsimile: (217) 362-7458
e-mail: shig_yasunaga@illinoispower.com

Dated: October 17, 2002

VERIFICATION

I, Shig William Yasunaga, being sworn on oath, state that the foregoing Verified Motion to Compel or, in the Alternative, Dismiss this Matter with Prejudice is true and accurate to the best of my knowledge, information and belief.



Shig William Yasunaga

Subscribed and sworn to before me this 17th day of October, 2002.

Notary Public

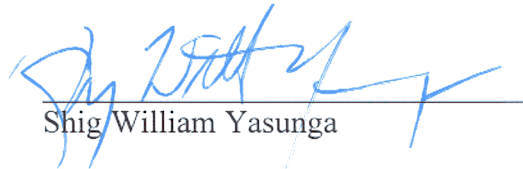
CERTIFICATE OF SERVICE

I, Shig William Yasunaga, certify that on the 17th day of October, 2002, I served a copy of Illinois Power Company's Verified Motion to Compel or, in the Alternative, Dismiss this Matter with Prejudice by first class mail, from Decatur, Illinois, postage prepaid to the individuals identified below:

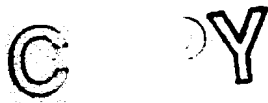
Yaodi Hu
428 E. Main St.
Danville, Illinois 61832

Derek J. Girton
Atty. for City of Danville
Acton & Snyder
11 E. North St.
Danville, IL 61832

City Clerk
City of Danville
17 W. Main St.
Danville, IL 61832-5705


Shig William Yasunga

Exhibi



July 23, 2002

Yaodi Hu
428 E. Main Street
Danville, Illinois 61832

Re: Yaodi Hu v. Illinois Power Company, ICC Docket # 02-249

Dear Mr. Hu:

Enclosed, relative to the above Formal Complaint, are Illinois Power's Data Request 1 through 6 directed to you. Please send the responses as they become available, but no later than August 20, 2002, in order to maintain the schedule set by the Administrative Law Judge on July 9, 2002. Electronic responses may be sent to me at shig_yasunaga@illinoispower.com, followed up with hard copies to the address listed above.

Please contact me at (217) 424-7050 with questions or for clarification remain,

Respectfully yours,

A handwritten signature in black ink, appearing to read "Shig William Yasunaga".

Shig William Yasunaga
Regulatory Counsel

Enclosure

cc: Tamara Evey, Case Manager

**Illinois Power Company
Data Requests 1- 6**

Docket No. 02-0249

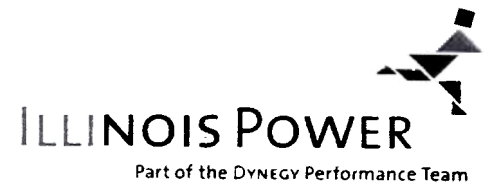
INSTRUCTIONS AND DEFINITIONS

- 1.** Furnish all of the information requested for each item in this data request. If that is not possible, indicate what information is not being provided and why it cannot be provided.
- 2.** Answer each data request in a separate response
- 3.** Identify the question to which you are responding by typing the complete question at the top of the response.
- 4.** Documents provided as part of your response should be numbered and attached to the sheet containing your response.
- 5.** Provide individual responses as they become available.

1. With respect to your allegations regarding action you have taken in your Amended Complaint, provide a copy of all complaints, petitions, or other filings, brought by you or on your behalf, in any forum, including but not limited to your action filed with HUD, regarding the building located at 428-432 E. Main Street, Danville, Illinois 61832.
2. With respect to your allegation regarding the fact that "[s]everal City Officials did not deny that they acted upon Illinois Power and its interests, please provide each and every fact, including the name of the official and date of the alleged act[s], that you have that supports your allegation.
3. With respect to your allegation regarding the fact that "[i]t was the Illinois Power repeatedly solicited City of Danville's electrical inspector denying power to us," provide each and every fact, including the names of the individuals involved, date, time and nature of the alleged act, that support your allegation.
4. Please detail, by date, subject matter, and content, each and every conversation, telephonic, in person, or otherwise, in which you discussed with any person associated with the City of Danville, Illinois Power, or any agency regarding electric service for the building located at 428-432 E. Main Street, Danville, Illinois 61832.
5. Please provide a copy of each and every correspondence you have received, or sent, to any person associated with the City of Danville, Illinois Power, or any agency regarding electric service for the building located at 428-432 E. Main Street, Danville, Illinois 61832. If you do not have such documents, please detail any such correspondence, by providing the name, date, and subject matter of the correspondence.
6. Please describe all electrical work that has been done on the building located at 428-432 E. Main Street, Danville, Illinois 61832 during the past 10 years.

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COPY



August 9, 2002

Yaodi Hu
428 E. Main Street
Danville, Illinois 61832

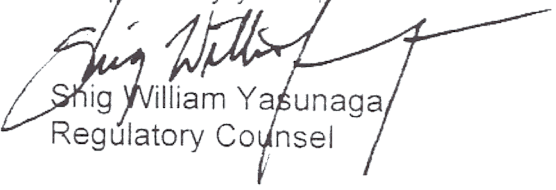
Re: Yaodi Hu v. Illinois Power Company, ICC Docket # 02-249

Dear Mr. Hu:

The Administrative Law Judge set July 23, 2002, as the deadline for data request or other informational request. I did not receive any requests from you. If it is your intention to no longer pursue this claim, please let me know so we can have it dismissed.

Please contact me at (217) 424-7050 if you have any questions or concerns. I remain,

Respectfully yours,



Shig William Yasunaga
Regulatory Counsel

cc: Tamara Evey, Case Manager

Exhibit 3

COPY

ILLINOIS POWER

Part of the DYNEGY Performance Team

August 23, 2002

Yaodi Hu
428 E. Main Street
Danville, Illinois 61832

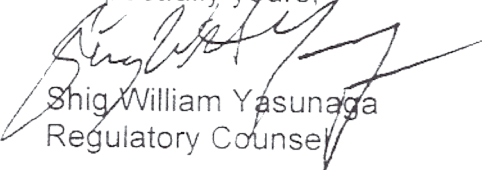
Yaodi Hu v. Illinois Power Company, ICC Docket # 02-0249

Dear Mr. Hu

This letter is intended to summarize our conversation on August 23, 2002. As I explained, on July 23, 2002, I sent you six (6) data requests related to the above-captioned matter. You explained that you have not prepared a response to any of these requests. Furthermore, you did not submit any data requests of your own to Illinois Power prior to the July 23, 2002, deadline. Accordingly, I am going to request that the Administrative Law Judge dismiss this matter during the August 28, 2002, Status Hearing. That being said, in the event this matter is not dismissed, I am certainly willing to further discuss this matter with you and see if there is anything that can be done.

Please contact me at (217) 424-7050 if you have any questions or concerns. I remain,

Respectfully yours,


Shig William Yasunaga
Regulatory Counsel

Tamara Evey, Case Manager

Exhibi

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ILLINOIS POWER

Part of the DYNEGY Performance Team



September 13, 2002

U.S. MAIL

Yaodi Hu
428 E. Main Street
Danville, Illinois 61832

RE: Illinois Power's First Set of Data Requests

Dear Mr. Hu:

I have reviewed your responses to Illinois Power's Data Request 1 through 6. I am extremely disappointed that you have failed to provide the requested information to Data Requests 2, 3, and 4. Furthermore, as you explained in our meeting on September 11, 2002, you still need to provide Illinois Power with an additional letter from the city of Danville. Therefore, with this letter, Illinois Power is requesting that you provide a supplemental response to each of these Data Requests on or before Wednesday, September 25, 2002.

With respect to Data Request 2, Illinois Power requested that "[w]ith respect to your allegation regarding the fact that '[s]everal City Officials did not deny that they acted upon Illinois Power and its interests,' please provide each and every fact, including the name of the official and date of the alleged act[s], that you have that supports your allegation." Your response specifically states that "[t]his response does not include 'each and every fact' requested by IP." You have brought this formal complaint making a number of allegations against Illinois Power. I expect you to be able to provide the facts that support your allegations. Therefore, we request that you provide "each and every" fact as requested in this Data Request.

With respect to Data Request 3, Illinois Power requested that "[w]ith respect to your allegation regarding the fact that '[i]t was the Illinois Power repeatedly solicited City of Danville's electrical inspector denying power to us,' provide each and every fact, including the names of the individuals involved,

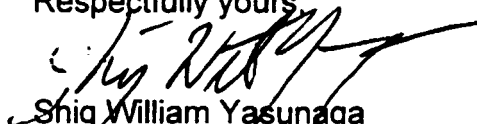
date, time and nature of the alleged act, that support your allegation." Your response provides no facts that support this allegation; rather, you provide your opinions and beliefs. If your response is that you have no facts, we request that you state such. If you have facts that support your allegation, I request that you provide such facts.

With respect to Data Request 4, Illinois Power requests that you "[p]lease detail, by date, subject matter, and content, each and every conversation, telephonic, in person, or otherwise, in which you discussed with any person associated with the City of Danville, Illinois Power, or any agency regarding electric service for the building located at 428-432 E. Main Street, Danville, Illinois 61832." You provide that Illinois Power can send its data request to the city of Danville once they are joined as a party. The Data Request is directed to you. Again, you have brought this formal complaint and, under the Commission's Rules, have an obligation to respond to Illinois Power. Illinois Power cannot be expected to respond to your complaint when you provide little or no information regarding the basis for your allegations. If you continue refuse to answer these requests, we will have no choice but to request that the Commission dismiss your complaint.

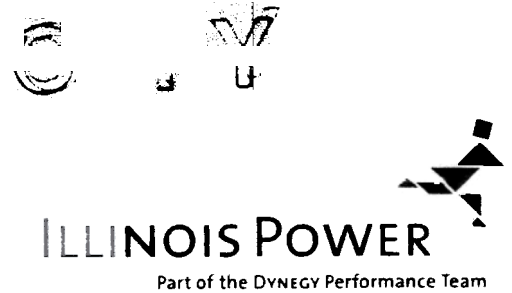
As I opened this letter, I am extremely disappointed in the responses I received. As you know, the information requested was initially to be provided by you on August 20, 2002. At the Status Hearing on August 28, 2002, you made representations that you had reviewed the Data Requests and were going to provide a full response on or before September 11, 2002. At no time during the Status Hearing did you indicate you would not fully respond or had any problem with the submitted data requests.

Please contact me as soon as possible as to whether or not you intend to provide a supplemental response to the data requests mentioned above. If I do not hear from you by September 25, 2002, I will file a motion to compel a response or otherwise dismiss this case. If you have any questions or concerns please let me know. I look forward to your response. I remain,

Respectfully yours,


Shig William Yasunaga
Regulatory Counsel
(217) 424-7060

Exhibi



September 27, 2002

U.S. MAIL

Yaodi Hu
428 E. Main Street
Danville, Illinois 61832

RE: Illinois Power's First Set of Data Requests

Dear Mr. Hu

This letter is intended to summarize our conversation on September 27, 2002, wherein you agreed to provide supplemental responses to Illinois Power's First Set of Data Requests by October 4, 2002. As we discussed, on September 13, 2002, I sent a letter requesting that you provide supplemental responses to certain data requests from Illinois Power. Subsequently, on September 20, 2002, you and I had a telephone conversation in which you agreed to provide supplements to the data requests by September 25, 2002. Since you have not conformed to the above-mentioned schedule, I have requested that you provide the supplemental responses by October 4, 2002, and you have agreed.

If I do not receive the responses by that date, I will request that the Administrative Law Judge compel your responses or otherwise dismiss this matter. Please call me immediately upon receipt of this letter if I have misinterpreted our understanding. I remain,

Respectfully yours,


Shig William Yasunaga
Regulatory Counsel
(217) 424-7050

Exhibi

COPY

ILLINOIS POWER

Part of the DYNegy Performance Team

October 7, 2002

Yaodi Hu
428 E. Main Street
Danville, Illinois 61832

Re Yaodi Hu v. Illinois Power Company, ICC Docket # 02-0249

Dear Mr. Hu

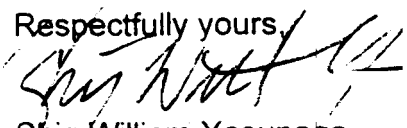
As I conveyed to you during our conversation on October 7, 2002, I am frustrated with your lack of response to Illinois Power's discovery requests in the above referenced matter.

Initially, on July 23, 2002, Illinois Power served upon you six data requests. Your responses were due on or before August 20, 2002. At the Status Hearing on August 28, 2002, the schedule was extended and you were to provide responses by September 11, 2002. During our conference on September 11, 2002, you provided certain information, but acknowledged that you did not provide a document from the city of Danville. Furthermore, upon review of the responses, it was revealed that you had not provided full responses to many of the data requests. Accordingly, on September 13, 2002, I requested that you provide supplemental responses to Data Requests 2, 3, and 4 and also provide Illinois Power with an additional letter from the city of Danville. As of today, I have not received any of the requested information even though you represented that you would provide such information during our recent telephone conversations.

As I explained in our conversation on October 7, 2002, if Illinois Power does not receive the supplemental information by Friday, October 11, 2002, I will file a motion to compel and/or a motion to dismiss.

Please contact me at (217) 424-7050 if you have any questions or concerns. I remain,

Respectfully yours,


Shig/William Yasunaga
Regulatory Counsel

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Response to Illinois Power Company Data Request 2

Docket No. 02-0249

Since June 4, 2002, when City of Danville officially declared that the building is uninhabitable, I had several conversation with Rodney Buckham, Mayor, Michael Federman and fire Captain who inspected the building.

In June, Rodney Buckham indicated to me at least two times that City of Danville has to "take care of the interest of Illinois Power Company," which demands that the electrical meter to be outside of the building. He indicated that the reason of this is that of past pirating and tampering.

Last summer, Danville electrical inspector, Mr. Underwood came to inspect the building. He said that Illinois Power wanted One service drop with all the meters to be outside of the building.

*This Response does not include
"each and every fact" requested by IP*

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Yaodi Hu

Sept 4, 2007

Exhibi

Response to Illinois Power Company Data Request 3

The information requested by IP in its request 3 would be the data request from the Complaint. In early February 2002 and March 2002, Complaint requested at least two times power supply from IP. First time it was for the address at 428 E. Main st. Second time is for the address at 432 E. Main st. Danville IL 61832. Second times involved at least two persons from IP to 432 E. Main st. The second person told Complaint that he was going to the City because he did not want to burn down the building. The first time, it also involved at least two persons. First person came and decided not to connect the electricity, saying "there is a history to the building," and that he was going to talk to the person who knows that history. All I know is that IP refused to connect power citing city's objection. It must be the case that IP personnel contacted the city, otherwise how would they get city's objection?

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Curtis M
Sept 9, 02

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Response to Illinois Power Company's Data Request 4

During the last 4 months, the Complaint had about 5-20 conversation with the Mayor of Danville, 10-15 conversation with Mike Federman, 30-40 conversation with Rodney Buckham, several conversation with the fire Captain, several conversation with Gene Underwood, regarding the electric service for the building located at 428-432 E. Main street Danville IL 61832 Complaint agrees IP that the City of Danville ought to be joined as defendant to resolve this pending impasse Once the City of Danville is joined as defendant, IP can send its data request to city of Danville

A handwritten signature in black ink, appearing to read "Zachary Hill", is written over a horizontal line.